GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Corporation Counsel

Testimony of

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Before the Council of the District of Columbia, Committee on the Judiciary

Public Hearing on: B15-666, Public Access to Juvenile Justice Amendment Act of 2004 and B15-673, Blue Ribbon Juvenile Justice and Youth Rehabilitation Act of 2004.

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Good evening. My name is David Rubenstein and I am the Deputy Corporation Counsel for the Public Safety Division in the Office of the Corporation Counsel. As you know, my office is responsible for the prosecution of juvenile delinquency cases in the District. With me this evening is Lori Parker, Interim Deputy Mayor for Children, Youth, Families and Elders. Deputy Mayor Parker oversees the District agencies that provide programmatic support and services to our youth and families. We want to thank Chairperson Patterson and Members of the Committee for the opportunity to testify on this legislation.

Public Access to Juvenile Justice Amendment Act of 2004

I would first like to comment on B15-666, the Public Access to Juvenile Justice Amendment Act of 2004, introduced by the Chairperson. As the Chair has noted, B15-666 reflects a trend in many jurisdictions and is modeled largely on the approach taken in New York.

The Administration believes that the current statutory restrictions have long outlived their usefulness. As the Corporation Counsel testified on January 16th of this year, the District is years behind other jurisdictions in examining its restrictions on information in juvenile delinquency proceedings. Today:

- At least 25 states either open juvenile hearings to the public completely or, at a minimum, in certain cases;
- At least 32 states open all or certain juvenile hearings to victims;
- At least 46 states allow certain juvenile records to be released to the public; and
- Every jurisdiction, except the District of Columbia, permits certain victims to access some or all, juvenile records.

(See Exhibit A for a comparison of state juvenile confidentiality laws). The Administration applauds the Chairperson's efforts to bring light to what has been described as a veil of secrecy that currently shrouds juvenile delinquency proceedings in the District of Columbia. As the

Chairperson knows, the Mayor's Bill, B15-537, similarly seeks to provide greater access to information and proceedings.

The Mayor's Bill is more narrow by limiting categories of information and the persons with whom information may be shared, limiting those who may attend juvenile proceedings to victims and witnesses and the like, and by vesting the discretion over the disclosure of certain information in the Corporation Counsel. We believe that the Mayor's Bill attempts to balance the legitimate need to release some information while addressing the concerns raised by some child advocates that confidentiality is an important factor in the rehabilitation of juvenile offenders. Therefore, the Administration would encourage the Council to enact the provisions of B15-537 that relax current confidentiality restrictions, while maintaining appropriate safeguards.

By contrast, Bill B15-666 is a more open approach that has been used in a number of other jurisdictions. If the Council decides that the approach crafted in B15-666 is the favored model, we would offer the following observations:

First, we would recommend that B15-666 be limited to delinquency cases and not include cases involving persons in need of supervision ("PINS"). PINS youth act out in self-damaging ways and, as such, the issues raised in their cases are more akin to issues raised in neglect rather than delinquency proceedings. For that reason, the public's need to know is less critical than in cases involving criminal acts by juvenile offenders.

Second, while B15-666 creates the likelihood that many proceedings will be open to public scrutiny, the bill is silent regarding how and whether the further disclosure of information is affected. That is, without also amending the three statutes governing the confidentiality of juvenile records, B15-666 would continue the veil of secrecy that governs records under D.C. Official Code §§ 16-2331, 16-2332 and 16-2333. In so doing, information that is part of a record may be discussed during an open hearing, but then would be precluded from further disclosure by those who were permitted to attend the hearing. Thus, without also amending §§ 16-2331, 16-2332 and 16-2333, the disclosure of information learned during an open hearing would remain a misdemeanor under D.C. Official Code §§ 16-2336. The practical effect of this would be that, though the public could attend a hearing, no individual, nor the media, could discuss anything that they heard.

If, in fact, this was not the result intended by the Chair, I would recommend that B15-666 be amended to limit the disclosure of a juvenile's identity by those who attended a hearing, but to exempt the remaining prohibitions contained in D.C. Official Code §§ 16-2331, 16-2332 and 16-2333 from further disclosure if learned in an open proceeding. This would protect the identity of the juvenile from public disclosure, and would continue to preclude the public release or inspection of written records, but would not yield the absurd effect of preventing any public discussion of what took place at a public hearing. Of course, I would also strongly urge that the Council—at the same time—adopt the amendments to D.C. Official Code §§ 16-2331, 16-2332 and 16-2333, contained within Title III of B15-537, to ensure that victims and witnesses, law enforcement officers, prosecutors, and other limited categories of government employees who are members of the Multi Disciplinary Team (MDT) or the Family Court Liaison, have access to certain information that is necessary to perform their official duties.

Blue Ribbon Juvenile Justice and Youth Rehabilitation Act of 2004

Next, I will turn to B15-673, the Blue Ribbon Juvenile Justice and Youth Rehabilitation Act of 2004. This Bill was introduced by Councilmember Fenty and, as Mr. Fenty stated during the first round of hearings in January of this year, was crafted with the able assistance of the District's Public Defender Service.

As the Mayor has stated, our approach to juvenile justice reform involves passing new laws that will protect our community and hold offenders accountable, and implementing programmatic changes that will enable us to better serve the youth in the juvenile justice system. To that end, there are many provisions of the Blue Ribbon Juvenile Justice and Youth Rehabilitation Act that the Mayor supports, either as written or with minor modifications. These provisions include:

- Establishing a Purpose Clause;
- Mandating that the Mayor appoint individuals to monitor the safety of children in shelter, group homes and Oak Hill;
- Requiring agencies that supervise youth to develop individualized treatment plans;
- Establishing a Parent Advisory Group to advise on juvenile justice programming;
- Requiring that all detention and commitment facilities incorporate best practices; and
- Requiring the Mayor to assess current community-based providers, initiate capacity building efforts and implement a range of alternatives to incarceration.

Similar to B15-537--the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003--the Blue Ribbon Juvenile Justice and Youth Rehabilitation Act of 2004 (hereinafter "the Blue Ribbon Act") proposes a purpose clause for Chapter 23 of Title 16 of the D.C. Official Code. Both proposals would establish the tone for the District of Columbia's juvenile justice system through adoption of a purpose clause that carefully balances the rights of victims and interests of public safety with the fundamental objective of rehabilitating our youth.[1]

To accomplish these ends, both bills establish goals for the juvenile justice system. These goals promote due process and fair hearings. They also recognize the need for early intervention, diversion, and community and neighborhood based treatment for youth. They place a premium on the rehabilitation of children with the goal of creating productive citizens of the City's youth. The goals recognize that rehabilitation of children is inextricably connected to the well-being and strength of their families and support family accountability and participation in treatment and counseling. They also seek to hold children found to be delinquent accountable for their actions and recognize that public safety is a legitimate concern of the juvenile justice system. These are all principles that the Mayor wholeheartedly supports.

[1] There are slight variations between the purpose clauses proposed by these two bills. For example, the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003 tracks the language proposed by the Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform, by proposing in the preamble that the system "..protect… the needs of communities and victims alike..." while the Blue Ribbon Act amends this recommendation to "…maintain… sensitivity to the needs of communities and victims alike."

Proposed Repeal of the Direct File Provision

The Blue Ribbon Act seeks to repeal the direct file provision, which allows a prosecutor the discretion to charge--as an adult--a person who is sixteen years of age or older who is accused of committing murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any of these offenses. Repealing this provision would be contrary to public safety and would allow the most violent older juvenile offenders to return back to the streets to rein terror within five years or less of committing some of the most heinous crimes.

Congress first enacted the direct file provisions in 1970 as part of the District of Columbia Court Reorganization Act. The legislative history of the Act makes it clear that this change was meant to limit the Juvenile Court's jurisdiction in favor of adult prosecution of certain offenders. Congress stressed that:

> Because of the great increase in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juvenile offenders charged with serious felonies to the jurisdiction of the adult court under present law, provisions are made in this subchapter for a better mechanism for separation of the violent youthful offender and recidivist from the rest of the juvenile community.[2]

Such language conveys the intention of Congress that jurisdiction over a 16- or 17-year-old juvenile charged with one of the specified offenses is not to be exercised in the Family Court unless the United States Attorney elects not to charge such an accused as an adult. The House Report also states that a "person 16 years or older, charged by the U.S. Attorney with an enumerated violent crime . . . is an adult . . . ." *Id.* at 149.

In addition to being contrary to most other jurisdictions and to the safety of this community, this provision of the Blue Ribbon Act seeks to repeal a power that Congress delegated to the United States Attorney for the District of Columbia. As such, the Council is without the authority to repeal D.C. Official Code § 16-2301(3). Section 602(a)(3) of the Home Rule Act states, in relevant part, that the Council has no authority to "[e]nact any act to amend . . . any Act of Congress . . . which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District." It is clear that the separate phrase, "application exclusively in or to the District," has a geographical dimension and is satisfied by the direct file provision. The issue, then, is whether the direct file provision "concerns the functions . . . of the United States."

The U.S. Attorney brings the charges under direct file provision on behalf of the United States, not the District. Thus, while the law being enforced is local, the U.S. Attorney is performing a function that is at least partly federal in nature. It would be a violation of 602(a)(3) for the Council to take away the U.S. Attorney's discretion to direct file by limiting the age criterion or the offenses covered. Here, the direct file function of the U.S. Attorney is at least partly federal in nature and is paid for by the federal government. Similarly, Section 602(a)(8) of the Home Rule Act prohibits the Council from "Enact[ing] any act or regulation . . .

[2] See H.R.REP. No. 907, 91st Cong., 2d Sess. 50 (1970).

relating to the duties or powers of the United States Attorney . . . for the District of Columbia." Therefore, the Council cannot lawfully repeal that provision.

Given the limitation on the Council's ability to repeal the direct file provision contained in D.C. Official Code §16-2301(3), it is unnecessary to adopt the language found on page 3, lines 11-15 of the Blue Ribbon Act. That provision seeks to amend the transfer provisions found in D.C. Official Code § 16-2307 by stating, "No individual who is charged with a delinquent act committed while under 18 years of age shall be transferred for criminal prosecution, except as ordered by a judge under the provisions of this section." As written that provision summarizes existing law.

D.C. Official Code § 16-2301(7) defines a delinquent act as an act designated as an offense under the law of the District of Columbia…" D.C. Official Code §16-2301 (3) defines a child as "an individual who is under 18 years of age, except that the term 'child' does not include an individual who is sixteen years of age or older and … charged by the United States attorney…" D.C. Official Code § 16-2307 provides for a hearing conducted by a judge prior to a decision on whether to transfer a child to adult court. Therefore, under present law an individual who is under 18 years of age, and not charged by the United States Attorney, who commits an offense under District of Columbia law, can only be transferred after a hearing and order by a judge.

Should the Council decide to adopt this provision, I would suggest that the Council limit the application of the statute to transfer hearings within the Family Court. Persons under the age of 18 may be transferred for criminal prosecution in federal court pursuant to federal law and this provision cannot limit that ability. I would suggest that this provision be amended to state, "No individual who is charged with a delinquent act in the Family Court committed while under 18 years of age shall be transferred for criminal prosecution, except as ordered by a judge under the provisions of this section."

Proposed Repeal of the Presumption of Guilt for Transfer Hearings and the Presumptive Waiver Provision enacted in 1993

Second, the Blue Ribbon Act would amend D.C. Official Code § 16-2307 by striking subsections (e-1) and (e-2). These subparagraphs were first enacted by the Council in 1993 as part of the Criminal and Juvenile Justice Reform Act of 1992. Subsection (e-1) provides that "For purposes of the transfer hearing the Division shall assume that the child committed the delinquent act alleged." Subsection (e-2) provides that there will be a rebuttable presumption that a child 15 and over who is charged with the most heinous crimes should be transferred for criminal prosecution in the interest of public welfare and the protection of the public.

The genesis of the proposal to repeal D.C. Official Code § 16-2307 (e-1) and (e-2) can be found on page 136 of the Final Report of the Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform. The authors state, "Commission members also expressed concern about the presumption of guilt against younger offenders who could be transferred **without a hearing**." (emphasis added). The authors then improperly conclude, "The Legislative Subcommittee, therefore, supports the recommendation that the transfer provisions of the D.C. Code Section 16-2307 (e-1) and (e-2) be deleted to remove the presumption of guilt from the court's **transfer proceedings**." (emphasis added). The only other reference to repealing D.C. Code § 16-2307 (e-1) and (e-2) in the Blue Ribbon Report

occurs on page 31 where the authors seek to "Amend and delete the transfer provisions of the D.C. Juvenile Code Sections 16-2307 (e-1) and (e-2), in particular in order to remove the presumption of guilt from the Court's transfer proceedings." Thus the Blue Ribbon Report is unclear as to whether the Commission was concerned about a presumption of guilt against younger offenders who could be transferred without a hearing or whether they felt that the presumption should not be available at transfer proceedings.

If the Commission's concern was about a presumption of guilt existing for offenders who could be transferred without a hearing, then the proposed legislation, like the author's recommendation, goes beyond the Commission members' stated concern because D.C. Code Section 16-2307 (e-1) and (e-2) only applies at transfer hearings. However, if the Commission's concern was about a presumption of guilt existing for offenders who could be transferred pursuant to a hearing, then the Commission Report gives scant justification for the removal of the presumption of guilt at transfer hearings and no support for the repeal of (e-2). D.C. Official Code § 16-2307 (e-2) has nothing to do with a presumption of guilt. Rather that provision provides for a rebuttable presumption of dangerousness for a limited number of the most serious cases that are subject to a transfer hearing. Paragraph (e-2) does not even apply in all transfer cases.

Paragraph (e-1) states that, "For the purpose of the transfer hearing the Division shall assume that the child committed the delinquent act." The purpose of this subsection is to allow the judicial officer to proceed only on the issue of transfer, not guilt or innocence, based upon this presumption. By repealing subsection (e-1), the Council would, in effect, require that the underlying criminal case be tried twice: once to prove the need to transfer an offender and then, again, after transfer. Trial of the underlying criminal case twice would place a tremendous additional burden on victims and witnesses, would be a waste of judicial resources and would put the prosecution at an unfair disadvantage when the case is ultimately tried to determine the merits of the charges. The additional pre-transfer hearing trial on the issue of guilt would add more time to an historically long process. Indeed, now—with the presumption of guilt for purposes of the transfer hearing only--it typically takes a year and a half from the time the transfer motion is filed until the case is transferred. See Exhibit B.

The Blue Ribbon Act also repeals subsection (e-2) of the transfer statute. That provision, enacted by this Council in 1993 to make the transfer of the most violent juveniles more expeditious, creates a rebuttable presumption that a child 15 and over who is charged with the most heinous crimes should be transferred for criminal prosecution in the interest of public welfare and the protection of the public. In all jurisdictions with such a presumptive waiver provision, the burden of proof rests on the offender, who is presumed to be subject to transfer unless he can demonstrate that treatment as a juvenile is justified.[3] In 1996, the District of Columbia Court of Appeals rendered the District's presumptive waiver meaningless. In *In Re J.L.M.*, 673 A.2d 174 (1996), the Court held that the presumptive waiver provision did not shift

[3] Interestingly, as of 1997, 15 states (including the District) designated a category of cases in which waiver to criminal court is rebuttably presumed during a hearing on a transfer motion. In all of these jurisdictions, except in the District of Columbia, the juvenile rather than the government, bears the burden of proof in the waiver hearing; thus, if the juvenile fails to make an adequate argument against transfer, the juvenile court must send the case to criminal court. In 10 of those states, a presumptive waiver places the burden of proof, by a preponderance of the evidence, upon the juvenile that he should not be waived to adult court. In four of those states, a juvenile has the burden of proof by clear and convincing evidence that a waiver is not justified. Indeed, today, only in the District of Columbia, has the presumptive waiver provision been interpreted to fix the burden of proof upon the government. See Exhibit C.

the burden of proof to the offender. In effect, the 1993 amendment now fails in its original intent. The Mayor's Bill seeks to bring the District's presumptive waiver provision in line with similar provisions in other jurisdictions. Repealing this provision, rather than strengthening it, is clearly a move in the wrong direction.

Rather than remove subparagraphs (e-1) and (e-2), thereby jeopardizing the public safety, I would urge the Council to adopt Title IV of the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003. Title IV—the Violent Juvenile Offenders Transfer Act of 2003, addresses a small but important population: the most violent offenders who cannot be effectively treated in our juvenile system.[4] Indeed, to make it more difficult to transfer these violent offenders—as proposed in the Blue Ribbon Act--would do a great injustice to the members of our community. Our citizens are demanding that we do more to protect our neighborhoods. The proposed repeal and amendments to the District's already modest transfer provisions do the opposite.

There are a number of other provisions of the Blue Ribbon Act that I think could be improved. I will comment on those now:

Initial Assessments and Individualized Treatment Plans

The Blue Ribbon Act would amend D.C. Official Code § 16-2319 to add new subsections that would require YSA to conduct evaluations and develop individualized treatment plans for each child committed to their care. In general, we support this recommendation and would suggest that every child who has been adjudicated in the juvenile justice system - whether committed to YSA or placed on probation under the auspices of Court Social Services - would benefit by being evaluated and having an individualized treatment plan.

Each year many more youth are placed on probation than are committed to YSA. In fact, many of the youth who are initially placed on probation, violate its terms, which lead to the revocation of their probation and their eventual commitment to YSA. Therefore, I would suggest that the proposed amendment to §16-2319 be extended to require that the Director of Court Social Services conduct the same evaluations and develop the same treatment plans for youth who are placed on probation as YSA would be required to do for youth who are committed. By requiring the Director of Court Social Services to evaluate every youth and implement an individualized treatment plan, we can insure that youth receive services at the earliest possible time and help prevent their further penetration into the juvenile justice system.

In addition, I would note that the time frames set out in this provision are impractical and do not represent best practices. In proposed paragraph (f), found on page 4, lines 19-21 of the Blue Ribbon Act, YSA would be required to develop an individualized treatment plan within 3 days of taking legal custody of the child. Because the very next sentence says that YSA must develop an individualized treatment plan within 14 days of completing the initial assessment of the child, I am assuming for purposes of my comments that the drafters intended

[4] See Heike P. Gramckow, Ph.D. and Elena Thompkins, J.D., "*Enabling Prosecutors to Address Drug, Gang, and Youth Violence*", published by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention, December 1999. ("If offenders have demonstrated that they are not amenable to treatment in the juvenile justice system or if the nature of the crime warrants, transfer to criminal court is necessary. Transfer of these offenders may protect juveniles who remain in the system and free up scarce resources to focus on those offenders who will benefit most from the system's rehabilitative programs.")

the 3 day time limitation to apply to a child's initial assessment not the individualized treatment plan. Either way, it is impractical to require YSA to develop a meaningful initial assessment or treatment plan in either 3 or 14 days. Moreover, best practices do not dictate such unrealistic timeframes. In fact the Blue Ribbon Act shortens the time frames recommended by the Blue Ribbon Commission. In the Blue Ribbon Commission's Report they recommend legislation that would require YSA to do an initial assessment within 14 days of receiving custody of a youth and develop an individualized treatment plan within 30 days of the initial assessment.[5] This is precisely the time frame recommended in the Mayor's Bill, B15-537 on page 47 lines 6-12.

This provision also calls upon YSA to prepare an assessment within 3 days, but fails to require that the Agency be provided with the juvenile's social file upon commitment. As a result, YSA is forced through this provision to prepare an assessment in an unduly short period of time and, perhaps, must do so without the juvenile's records. It is the Director of Court Social Services who supervises children prior to their commitment, and his staff keeps all social records. The proposed legislation does not require Court Social Service staff to transmit the entire social file on the day that legal custody of the child is transferred to the Youth Services Administration. Instead it allows for the passage of two days before the Court must order the Director of Court Social Services to produce the social file. Thus, YSA may be left with no more than one day after receiving a youth's records—and perhaps less—to prepare an initial assessment. More likely, YSA will not receive the social record until after its deadline to produce an initial assessment and well into the brief time allotted to develop an individualized treatment plan.

The stakes for the child and YSA are high. The unreasonably short timeframes create incentives to producing assessments and treatment plans that are based on incomplete information or which comply with the letter of the statute but are not truly individualized. YSA should be given 14 days to develop the initial assessment and 30 days after that to develop a comprehensive treatment plan, as proposed in the Mayors' Bill.[6] Because YSA does not control when it receives social records from the Director of Court Social Services, it cannot ensure that an initial assessment will be completed in 3 days or individualized treatment plans in 14. If it fails to meet those short deadlines then the proposed legislation, on page 5, lines 4-6, would allow the Court, in its discretion, to remove the child from YSA's custody. I would also note that there is no time limitation placed on the Court's exercise of this discretion. Pursuant to this provision, the 3-day deadline can be missed because of Court Social Service inaction and the Court can remove the child from the Youth Service Administration's custody 9 months later.

Rather than adopt the amendments to D.C. Official Code § 16-2319 found in the Blue Ribbon Act, I would urge the Council to adopt Titles X and XI of the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003. These titles are also derived from recommendations to the Mayor by the Blue Ribbon Commission on Juvenile Justice and Youth Safety. They reflect efforts to improve the delivery of services to youth on the programmatic side by ensuring that timely and thorough assessments, treatment plans and periodic evaluations are completed. However, these provisions would provide sufficient time for YSA to develop a meaningful initial assessment and a well-developed individual treatment plan.

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[5] Final Report of the Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform, pages 31 and 126.

[6] See the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003, page 39, line 16 though page 40, line 15.

Detention of Persons in Need of Supervision (PINS)

The Blue Ribbon Act, like the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003, proposes changes to D.C. Official Code § 16-2320(d) concerning the conditions under which youth who are alleged or found in need of supervision (PINS) can be detained. Currently, under D.C. Official Code §16-2320(d), youth who are found in need of supervision may be committed to or placed in an institution or facility for delinquent youth in two circumstances: (1) if they have also been found delinquent, or (2) if they were previously adjudicated in need of supervision and the court specifies a placement at a delinquency facility. Both pieces of legislation would add the additional safeguard that requires the court to release the child to his or her family, unless the return of the child will result in placement in, or return to, an abusive situation or the child's parent, guardian or custodian is unwilling or unable to care for or supervise the child. However, the Blue Ribbon Act goes beyond the recommendation made by the Blue Ribbon Commission and mandates that if the child is not returned to his or her parent that the Office of the Corporation Counsel shall file a neglect petition.[7] There are two problems with this additional language. First, the Council should not usurp the Executive's discretion regarding when to file charges. Indeed, the executive branch is always vested with the discretion on whether to bring cases. Second, though the Blue Ribbon Act would require the Corporation Counsel to file a neglect petition, the Act does not amend D.C. Official Code § 16-2301(9)(D) to ensure that once these cases are brought the parents cannot use their child's PINS behavior as a defense to the allegation of neglect.

In lieu of this provision, I would instead urge the Council to enact Title IX of the Mayor's Bill – the Release of Certain Children in Need of Supervision Act of 2003

Periodic Evaluations

I would urge the Council to adopt the language in the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003, found on page 39, lines 9-11, rather than the language proposed in the Blue Ribbon Act, on page 6, lines 2-4. Both of these provisions would amend D.C. Official Code § 16-2323 to require YSA to conduct evaluations of a child to determine "a plan for services that will promote the rehabilitation and welfare of the child and the safety of the public." While both bills recognize that the child and the child's attorney need to be present for the meeting with Youth Services Agency personnel, the bills differ on who else should attend and the timing of these meetings. The Blue Ribbon Act would have the judge attend these meetings whereas the Omnibus legislation would have attorneys from the Office of the Corporation Counsel participate. There are two problems with the proposal made in the Blue Ribbon Act:

- The Blue Ribbon Commission's recommendation that a judge participate in these meetings was made prior to the Court of Appeals decision in *In re P.S.*[8] That decision makes it is clear that the court lacks authority to alter a commitment order. Therefore, there is no purpose served by judges attending these meetings.
- A judge is prohibited from attending a meeting with a child and his attorney without the Office of the Corporation Counsel present. These meetings would

[7] The Blue Ribbon Commission's recommendation to amend the Persons-In-Need-of-Supervision (PINS) provisions can be found on pages 122-123 of their report.
[8] *In re P.S.*, 821 A.2d 905 (2003).

constitute *ex parte* communications that are barred by the District of Columbia Courts' Code of Judicial Conduct 3(B)(7).[9]

Moreover, the Blue Ribbon Act would require that these meetings occur every thirty days. It is impractical for the meetings to take place this frequently. To assess rehabilitative progress in thirty-day increments suggests that well-established human behavior is far more amenable to change than we know to be true. As written, the Blue Ribbon Act would require a Family Court judge to attend an additional monthly meeting for each committed youth. Defense attorneys will have to be paid to go to these meetings and youth's daily programming activities will be disrupted so that they can attend. At the current commitment rate, this legislation would require attendance at approximately 80 additional meetings per month, at a substantial cost that is not likely to be justified in thirty-day increments.

Modification of Disposition Orders

The Blue Ribbon Act also proposes that D.C. Official Code § 16-2323 be amended to add a provision that states "(h) Not more than once in a 6-month period, the child, or the child's parent or guardian, may petition the Division to modify a dispositional order, issued pursuant to D.C. Official Code § 16-2320, on the grounds that YSA is not providing or cannot provide appropriate services or level of care." This provision is similar to a provision that the Council repealed in 1993.[10] Prior to its repeal, D.C. Official Code § 16-2324 (b) stated that "A child who has been committed under this subchapter to the custody of an …. agency… may file a motion for modification or termination of the order of commitment on the ground that the child no longer is in need of commitment, if the child or his parent … has applied to the…agency for release and the application was denied or not acted upon within a reasonable time. Paragraph (d) continued, "A motion may be filed under subsection (b) only once every six months."

The reasons that the Council repealed the court's jurisdiction to entertain motions to modify commitments are still valid today. This provision, if enacted, would lead to a motion being filed in every commitment case every 6 months. Moreover, because defense counsel represents the delinquent client in the same fashion that a criminal defense attorney represents an adult criminal client, such motions would not be premised on the juvenile's best rehabilitative interests. Instead, defense attorneys would likely be compelled to file motions, even when a youth's rehabilitative progress was favorable. In turn, hearings on these motions—regardless of their merit—would require that resources be diverted from providing services, to instead, preparing for regular hearings on such motions. In this day of limited resources, asking social workers to spend more time in hearings, instead of providing services, is not the smartest use of such resources.

Mandating a Deadline to Close Oak Hill

The Administration is presently studying mechanisms to modify the use of Oak Hill Youth Center. Indeed, with the new detention facility targeted to open this year, less stress will be placed on the Oak Hill facility, which will soon be limited to a population that today, averages

[9] District of Columbia Courts' Code of Judicial Conduct 3(B)(7) states in relevant part, "…A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding…"

[10] See Law 9-272, the Criminal and Juvenile Justice Reform Act of 1992 and D.C. Act 9-401, Sec. 104 which repealed subsections ((b), (c), and (d) of D.C. Official Code § 16-2324.

approximately 80 committed youth. It is critical that the development of a new facility for committed youth not be done under the burden of an arbitrary deadline, but rather, be guided by a well-designed plan. Indeed, a deadline mandating Oak Hill's closure, without assurances that alternative facilities can be timely developed, might negatively impact on YSA's ability to comply with certain requirements of the *Jerry M* consent decree.

To that end, the Administration is concerned that mandating a year and a half deadline in which to close Oak Hill and transfer operations to newly built facilities places the focus on a deadline, rather than the best-developed plan. This mandate fails to take into consideration the practical problems that arise when a new facility, or new facilities, need to be sited, designed, funded, and built. Moreover, closure of Oak Hill without ongoing use of the Forrest Haven land by the District would jeopardize the District's rights to the land; land which we can hardly afford to forfeit.

In addition, the problems in meeting a closure deadline would be exacerbated by Section 3, subparagraph (a)(1) of the Blue Ribbon Act. That provision would require that no more that 30 committed or detained children be in a facility, and that females and sex-offending youth be in facilities of no more than 10 children. It is unclear as to why the law would dictate that 30 males can be housed together, but only 10 females may be housed together. Moreover, this provision would render most of the new facility, being built on Mt. Olivet Road, unusable before it opens. This is true notwithstanding that it is designed in such a way that the various units can operate as if they were in separate buildings and the Blue Ribbon Commission supported its construction.[11]

Today, there are approximately 170 detained and committed youth at Oak Hill. This provision of the Blue Ribbon Act would give the City one and one half years to fund and construct at least 6 facilities.[12] Even if every member of this Council was willing to similarly mandate that each ward of the City must allow for the uncontested construction of at least one such a facility, it is unthinkable that such a timetable could be met. Instead, passage of this provision would result in the development of poorly designed and poorly constructed facilities—in the poorest neighborhoods of our City.

In closing, I want to encourage the Council to enact B15-537, the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003. This legislation, submitted by the Mayor, is a thorough and balanced approach to juvenile justice reform. The Bill carefully recognizes the concerns expressed by so many members of our community about safety and accountability, but also preserves the fundamental goal of our juvenile system: rehabilitation. It incorporates, in a practical way, the best recommendations of the 2001 Blue Ribbon Commission, but does so in a way that recognizes how critically important it is to protect our community. We owe it to the citizens of our great City to assure that they are protected from the most violent offenders whether the offender is 15, 17 or 20.

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[11] Final Report of the Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform, pages 23-24 and page 30.

[12] The actual number of facilities would, in fact, be higher because this total does not take into consideration the 10 person facilities that would have to be built to accommodate "sub-populations such as females and sex-offending youth." Page 6 lines 15-16 of the Blue Ribbon Act.

Exhibit A

State	Proceedings may be open to public*	Proceedings may be open to victim*	Information may be available to public**	Information maybe available to victim**
Minimum Totals:	**24**	**32**	**46**	**50**
Alabama				■
Alaska	■	■	■	■
Arizona		■	■	■
Arkansas	■	■	■	■
California	■	■	■	■
Colorado	■	■	■	■
Connecticut			■	■
Delaware	■	■	■	■
District of Columbia				
Florida	■	■	■	■
Georgia	■	■	■	■
Hawaii		■	■	■
Idaho	■	■	■	■
Illinois			■	■
Indiana	■	■	■	■
Iowa			■	■
Kansas	■	■	■	■
Kentucky		■	■	■
Louisiana	■	■	■	■
Maine	■	■	■	■
Maryland		■		■
Massachusetts	■#	■#	■	■
Michigan	■	■	■	■
Minnesota	■	■	■	■
Mississippi			■	■
Missouri		■	■	■
Montana	+	+	■	■
Nebraska	+	+	■#	■#
Nevada	+	+	■	■
New Hampshire		■	■	■
New Jersey	■	■	■	■
New Mexico	■	■	■	■
New York			■	■
North Carolina			■	■
North Dakota	■	■	■	■
Ohio	■	■	■	■
Oklahoma	■	■	■	■
Oregon		■	■	■
Pennsylvania	■	■	■	■
Rhode Island				■
South Carolina			■	■
South Dakota		■		■
Tennessee			■	■
Texas	+	+	■	■
Utah	■#	■#	■	■
Vermont			■#	■
Virginia	■	■	■	■
Washington	+	+	■	■
West Virginia			■	■
Wisconsin	■	■	■	■
Wyoming			■	■

*See attachment, summarizing scope/limit of jurisdiction's provisions regarding opening proceedings/hearings to the public and to the victim.

** See attachment, summarizing scope/limit of jurisdiction's provisions on the release of information/records to the public and to the victim.

+ Indicates that the state statutes could not be located during this research project. However, in some instances, State Constitutions seem to indicate that victims have a right to information and to be present during court proceedings.

Source – Szymanski, L. Public Juvenile Court Records. *NCJJ Snapshot* 5(10). Pittsburgh, PA: National Center for Juvenile Justice, 2000.

Legend:
* Summarizes scope/limit of jurisdiction's provisions regarding opening proceedings/hearings to the public and to the victim.
** Summarizes scope/limit of jurisdiction's provisions on the release of information/records to the public and to the victim.

Alabama	** Petition, motions, dispositions, and court notices are open for inspection by victim (or representative).
Alaska	* Hearings on the petition are open to the public if a motion is filed to open the hearing and if (1) petition alleges an offense and juvenile has knowingly failed to comply with department or court ordered condition, or (2) offense alleged is a felony equivalent or involves use of deadly weapon, or is arson, burglary, distribution of child pornography, or promoting prostitution if the first degree. Hearings on the petition are also open to public if (1) the juvenile is charged with certain drug offenses, or, (2) the offense is a felony and the juvenile was 16 or older at time of offense and the juvenile has at least one other felony equivalent adjudication, or, (3) the juvenile agrees to a public hearing. ** Identity of juveniles charged with certain offenses who are at least 13 at the time of the offense and who have either violated conditions or have a prior adjudication of certain offense(s) will be made public (this includes parent name and address). If the victim suffering personal injury or property damage from the juvenile's offense knows the juvenile's identity and identifies the juvenile and the offense to the court, and if the victim certifies that the information is to be used only for pursuit of a civil action against the juvenile or the juvenile's parent/guardian, the victim is entitled to inspect the petition and court order or judgment disposing of the petition.
Arizona	* Victims have the right to be present and heard at all detention hearings and at all hearings addressing restitution where a juvenile is charged with an offense which, if committed by an adult, would be (1) a felony, or (2) a misdemeanor involving physical injury, the threat of physical injury, or a sexual offense. ** Certain juvenile arrest records, records of delinquency hearings, records of disposition hearings, summaries of delinquency, disposition and transfer hearings, records of revocation of probation hearings and diversion proceedings are all open to public inspection. The court may order that these records are confidential if it determines that a public interest in confidentiality requires it. Law enforcement officials must provide the victim information about whether the juvenile will be released or detained pending a detention hearing.
Arkansas	* The juvenile has a right to an open hearing. ** Detention facility shall release to public the name, age, and description of juvenile escapees, and any other relevant information to help capture the juvenile if juvenile could have been tried as adult. On written request, court or prosecutor may tell victim about the disposition of adjudicated juveniles.
California	* Proceedings are open to public when juvenile is charged with certain offenses to the same extent they would be open if the case were in adult court. In all other cases, proceedings may be opened at juvenile's request. Up to 2 family members of a witness may be present during that witness's testimony. Court may admit any person it believes has a legitimate interest in the case. ** Records open to public – exception when there is petition from requesting party and opportunity for interested parties to object. Identity of juvenile may be released to public if juvenile of certain is charged with a violent offense and release of info would help with capture. Identity must be released to anyone requesting it if juvenile is an escapee. Name of juvenile adjudicated of certain offenses shall be open to public (unless judge orders confidential for good cause – safety of juvenile, victim, etc.
Colorado	* Open to the public unless court finds that it is in the best interest of the juvenile or of the community to exclude the general public. ** Court and law enforcement records are open to victim. Law enforcement records are open to public if juvenile is adjudicated of certain offenses. Petitioning records, including juvenile's identity, are available to public.
Connecticut	** Juvenile records are open to victim to same extent records would be open in adult matter. Identity information is public for escapees and/or when a felony warrant is outstanding.
Delaware	** Proceedings where the juvenile is charged with a felony equivalent are open to public. All other proceedings are open to public only if judge determines it is in best interest of public. ** Victim is to be notified of the release of the juvenile.
District of Columbia	Neither the public nor the victim has a statutory right to records or to attend proceedings.
Florida	* All hearings must be open to public unless court finds it is in best interest of public and juvenile to close hearing. **Juvenile's identity may be released if juvenile is charged with a felony equivalent or if juvenile has 3 or more adult misdemeanor equivalent adjudications. Court and law enforcement shall release to the media the name and address of juvenile and parents if the juvenile offense is a felony or class A misdemeanor equivalent. Victim is entitled to the juvenile offense report.

Georgia	* Public shall be admitted to juvenile hearings if the juvenile is (1) charged with certain felony offense(s), (2) juvenile has prior adjudication (unless there is an allegation of sexual assault or a party intends to introduce certain evidence. ** When juvenile who is adjudicated of certain felonies and who is in custody of the Dept. of Juvenile Justice is released from custody or confinement, the Dept. must inform the victim.
Hawaii	** Closed to public. Open to victim and witnesses (under 18 may have parent, etc. and attorney present) * Records open to public if juvenile is 14 or older and offense is amongst certain felonies or if juvenile has 2 or more prior felony adjudications. Victim and anyone else who may file suit related to case are entitled to juvenile's identity information.
Idaho	* Open to public if juvenile is 14 or older and offense if a felony equivalent (unless judge and prosecutor agree it is not in juvenile's interest). **Victim is entitled to juvenile's name, phone number, and address and parents' names, phone numbers, and addresses if that information is in court records. Records on all proceedings against juvenile 13 or younger (see *) are open to public unless court issues a written order to the contrary.
Illinois	**Juvenile's name, address, and disposition (or alternative) information are open to victim. Names, addresses, and offenses are open to public for certain offenses.
Indiana	* Court has discretion to determine if proceedings should be open to public; however, if the juvenile is alleged to have committed an offense that would be a murder if committed by an adult, then the proceeding is open to public. Court may close portions of proceedings during testimony of child witness or child victim. ** Juvenile's name, age, offense, and chronological case summaries, motions, petitions are open to public for certain offenses.
Iowa	**If juvenile is an escapee, juvenile's name, offense, and facts of escape are released to public. Complaint for certain offenses and juvenile's name are open to public. Records of proceedings are public unless proceeding was closed by court.
Kansas	* Juvenile adjudicatory proceedings are open to public for juvenile 16 years and older. Adjudicatory proceedings for juveniles under 16 are open unless the court finds that it is not in the juvenile's best interest. The victim may not be excluded even if the court makes such a finding. ** Official court files are open to public if juvenile is 14 or older. Official court files of juveniles under 14 are open to public unless judge determines otherwise. Law enforcement records of juveniles age 14 or older are open to public to same adult records are open.
Kentucky	* Victim has right to notice of and attendance at juvenile proceedings. ** Public may inspect law enforcement and court records of juveniles adjudicated of a capital offense, certain felonies, or an offense where a deadly weapon is use, displayed, or involved. Juvenile records containing information about the arrest, petitions, adjudications, and dispositions may be available to victims and others entitled to attend the court proceedings.
Louisiana	* Open to public when juvenile is alleged to have committed certain violent offense(s) or when alleged offense is a felony equivalent and juvenile has a prior adjudication for a felony equivalent. For certain violent felony equivalent offenses, proceedings are open to victim, and victim's spouse, children, siblings, and parents. ** Following a pretrial finding of probable cause, law enforcement shall release name, age, offense of the juvenile if the juvenile is charged with a violent offense or if charged with 2 or more felony equivalents. Court records are confidential unless juvenile is adjudicated of violent offense or on showing of good cause by a movant.
Maine	*After petition is filed, proceedings must be open to public for certain offenses. ** Juvenile's identity is open to victim. When a proceeding is open to public, record of that proceeding is open to public.
Maryland	* Victim is entitled to attend juvenile adjudicatory proceedings. ** Victim is entitled to notice of proceedings. Juvenile records are confidential absent a court order.
Massachusetts	* State Constitution provides access to criminal proceedings as a right for victims. ** Court records are confidential. Records of juvenile offenders charged by indictment are open for inspection in the same way that adult criminal records are open. Juvenile names are available to public if juvenile is between 14 and 17 of offense would carry prison time if committed by adult and if juvenile has 2 or more adjudications of offenses which would carry prison time if committed by adult.

Michigan	* Open to the public. Court may close the proceedings when a child witness is testifying or the victim is testifying. ** Juvenile records are generally open to inspection by general public (some records may be confidential and open to inspection only by certain people).
Minnesota	* Victim is entitled to attend adjudication proceedings and has the right to have a non-witness present in the courtroom during his or her testimony. Court shall open proceeding to general public if the juvenile is charged with or adjudicated for a felony equivalent offense and if that juvenile is at least 16 at time of offense. ** In certain cases, the victim may obtain the juvenile's name, age, information about the offense, and dispositional information. In all cases where the petition specifically names the victim, the victim is entitled to know the disposition of the case.
Mississippi	** Records of juveniles with 2 or more adjudications for sexual offenses are open to public. Juvenile's names and addresses are open to public if juvenile has 2 adjudications for felony equivalent offenses and/or at least 1 adjudication of certain felonies. Victim is entitled to know the disposition in juvenile cases.
Missouri	* Victims are entitled to attend any proceeding the juvenile has a right to attend. * Juvenile officers may discuss matters concerning the juvenile, the offense, the case with the victim (and witnesses). Juvenile officers may give information to the victim (and witnesses) about the juvenile, the offense, the case. If a juvenile is adjudicated of a felony equivalent offense, records of dispositional hearings and related proceedings are open to the public to the same extent adult criminal records are open.
Montana	** Petitions, motions, court findings, verdicts, orders, and decrees on file with the court clerk are public records. Victim is entitled to all information concerning the juvenile's identity and disposition.
Nebraska	
Nevada	* State Constitution provides access to criminal proceedings as a right for victims. ** Juvenile's name and the nature of the alleged offense(s) may be released to the public and broadcast if juvenile has been adjudicated of a felony equivalent offense and that offense resulted in death or serious bodily injury, or if the juvenile has 2 prior felony equivalent adjudications, or if the juvenile is adjudicated a serious or chronic offender. Juvenile's name may be released for the purpose of a civil action arising out of the juvenile's conduct.
New Hampshire	* Victim may appear and give written impact statement prior to any plea and at dispositional hearing. ** When the juvenile is charged with a violent offense, the victim is entitled, on request, to the juvenile's name, age, address, and custody status. The prosecutor may discuss disposition and plea bargaining with that victim. That victim is entitled to information about any release (even if temporary) of the juvenile or any change in placement. Before the juvenile court's jurisdiction terminates, that victim is entitled to information about the juveniles intended place of residence. With written approval of the prosecutor, law enforcement may release the name of the juvenile and a photograph if the juvenile escapes from court-ordered detention and if there is reason to believe that the juvenile poses a risk to public safety or to him or herself. Juvenile may give written permission allowing access to records.
New Jersey	* Open to victims. On request of juvenile, prosecutor, the victim, or the media, the court may open up to public. ** Victims have access to court and law enforcement records for civil suits. On request, victim shall have juvenile's name, charge (at the time of the charge), adjudication and disposition information. The juvenile's name, charge, adjudication and disposition information is public for juveniles adjudicated of certain felonies.
New Mexico	* All hearings on juvenile petitions are open to public unless court, upon findings of exceptional circumstances, determines that they should be closed.
New York	** Court records may be inspected at court's discretion.
North Carolina	** All records are confidential except that, with the parent's permission, juvenile runaway's photo may be released to public .
North Dakota	* Proceedings to consider a petition for certain offenses are open. When a proceeding is closed, the court may allow the victim to be present. ** All records are confidential except that identification information may be released to public to assist in apprehending a juvenile.
Ohio	* Proceedings open to public unless, after holding a hearing on the issue, the court finds that closing the proceeding is appropriate. Such a finding does not limit the victim's right to attend. ** Victims of sexual offenses shall be informed if the juvenile has a communicable disease and the nature of that disease.

Oklahoma	* Juvenile hearings are open to the victim. Hearings for what may be a juvenile's second or any subsequent adjudication are open to the public. Court may exclude the public for certain testimony. ** Court and law enforcement records are closed except: (1) judge may release if finds there is a legitimate public or private interest (2) they are not confidential (and are presumably open to public) if juvenile is 14 or older and committed a felony equivalent with a weapon OR has prior adjudication of 2 or more delinquent acts. Identification information may be made public if juvenile is an escapee.
Oregon	* Victim has the right to be present at open court proceedings where the juvenile is to be present. ** Not confidential and not exempt from disclosure: juvenile offender's name, DOB, date/time/place of proceedings, dispositions, offense alleged, names and addresses of juvenile's parents; if taken into custody under certain statute info about whether the juvenile resisted being taken into custody, and whether pursuit or weapon had to be used to take juvenile into custody shall be disclosed. Social file records are generally confidential except that it shall be released to anyone who may be in danger from the juvenile.
Pennsylvania	* Open to victim. Open to public where juvenile is 14 or older. Open to public where juvenile is 12 or older if juvenile is charged with certain felonies. Juvenile and prosecutor may enter an agreement limiting access to the proceedings. ** Law enforcement records may not be disclosed to public unless juvenile was 14 or older at time of offense and has (1) an adjudication for certain firearm offenses, or (2) petition alleges certain firearm offense(s) and juvenile has a prior adjudication for an related to certain firearm offenses.
Rhode Island	** Victim may petition court for juvenile's name and address and the names and address of parents for the purpose of pursuing a civil suit.
South Carolina	** On request, victim shall get juvenile's name, descriptive information, including photograph, status and disposition action including hearing dates, times and location. Name, identity or picture of juvenile not to be given to media unless juvenile adjudicated for certain violent crimes, motor vehicle theft, certain weapons offenses, distribution.
South Dakota	* The victim may attend all hearings.
Tennessee	** Law enforcement records, petitions and court orders in juvenile proceedings are open to public if juvenile is 14 or older at time of offense and offense is certain type of felony (e.g. murder, rape, aggravated robbery, kidnapping).
Texas	** Court records may be open to inspection, with leave of the court, to anyone with a legitimate interest in the case. Court will release identification information to public if juvenile is wanted (escapee/warrant).
Utah	** Victim has right to know if juvenile is seeking to expunge a record and can testify at that hearing. Court records are open (unless judge denies for good cause shown) to anyone who files a petition to inspect and the juvenile is 14 or older at time of offense.
Vermont	** On request, victim may get juvenile's name if the juvenile is adjudicated of an offense that would be an adult felony.
Virginia	* Open to public if juvenile is 14 or older and is alleged to have committed an offense that would be an adult felony (unless closed by judge on juvenile's motion). All juvenile proceedings are open to victim (court may exclude where victim is being called as witness) ** Victim of any felony has the right to know charges, disposition and court findings. Records are open to public if juvenile is 14 or older and is alleged to have committed a felony. Records may be open to interested party by court order. Court shall release identification information to public if offense is dangerous felony and if public interest requires. On court order, identification information may be released to public to assist in apprehending a juvenile escapee or fugitive.
Washington	** Official court juvenile file is open to public. On victim's request, the juvenile's name, the name of his or her parents, and the circumstances of the crime will be released to the victim. A person who believes that information about them is in the juvenile justice file and who has been denied access to the file may file a motion with the court to get access to the information. The court will grant the request unless it is not in the best interest of the child. Victims of sexual offenses and violent offenses are entitled, on request, to know about release and transfer of juvenile.
West Virginia	** Juvenile record is subject to public inspection pending trial where juvenile is charged with committing certain offense(s) , and there has been a finding of probable cause, and the juvenile has not been transferred to an adult court, and the juvenile is released. The name and identity of any juvenile adjudicated of a violent or felonious crime will be made available to the public.
Wisconsin	* Victim may attend juvenile proceedings. Hearings will be open to public if juvenile is alleged to have committed a felony equivalent and the juvenile has a prior adjudication. ** Law enforcement and court records are closed unless person denied petitions the court. If the juvenile objects to opening the record, the court will hold a hearing.
Wyoming	** Records of juvenile proceedings where juvenile is adjudicated of a violent felony are open to the public. Victim may inspect juvenile records. Court may release records, including juvenile's name, to media where safety is a concern and where court believes it would deter other juvenile offenders.

Exhibit B

Timeframes for Youth Who Were Transferred in the District of Columbia Since 1992

Case Name	**Date Transfer Motion Filed**	**Date Hearing Began**	**Dates of Hearing**	**Date Trial Court Decided-Ordered Transfer**	**Date Court of Appeals Affirmed**	**Total Time span from Date Filed to Date Affirmed**
In Re W.T.L	July 5, 1994	October 3, 1994	October 3, 1994 to October 18, 1994	October 18, 1994	March 25, 1995	Over 8 months
In Re J.L.M.	November 10, 1994	March 7, 1995	March 7, 1995 to March 13, 1995	April 7, 1995	February 5, 1996	Almost 15 months
In Re S.M.	October 2, 1997	March 18, 1998	March 18, 1998 to May 11, 1998	July 31, 1998	April 22, 1999	Over 18 months
In Re D.R.J.	December 8, 1997	April 20, 1998	April 20, 1998 to May 4, 1998	May 28, 1998	July 15, 1999	Over 19 months

Exhibit C
Overview: Comparison of Juvenile Transfer Provisions, 1997

(adapted from the U.S. Department of Justice,	Judicial Waiver			Direct File	Statutory Exclusion	Reverse Waiver
	Discretionary	Mandatory	Presumptive			
Total States:	46	14	14	16	28	23
Alabama	□				□	
Alaska	□		□		□	
Arizona	□		□*	□	□	□
Arkansas	□			□		□
California	□		□			
Colorado	□		□	□		□
Connecticut		□				□
Delaware	□	□			□	□
Dist. of Columbia	□			□		
Florida	□			□	□	
Georgia	□	□		□	□	□
Hawaii	□				(repealed 1997)	
Idaho	□				□	
Illinois	□	□			□	
Indiana	□				□	
Iowa	□				□	□
Kansas	□		□		(repealed 1996)	
Kentucky	□	□				□
Louisiana	□	□		□	□	
Maine	□					
Maryland	□				□	□
Massachusetts	(repealed 1996)			□	□	
Michigan	□			□		
Minnesota	□		□		□	
Mississippi	□				□	□
Missouri	□					
Montana	□			□	□	
Nebraska				□		□
Nevada	□		□		□	□
New Hampshire	□		□			
New Jersey	□		□			
New Mexico						
New York						□
North Carolina	□	□				
North Dakota	□	□	□			
Ohio	□	□				
Oklahoma	□				□	□
Oregon	□				□	□
Pennsylvania	□		□		□	□
Rhode Island	□	□	□			
South Carolina	□	□			□	□
South Dakota	□				□	□
Tennessee	□					□
Texas	□					
Utah	□		□			
Vermont	□			□		□
Virginia	□	□		□		□
Washington	□				□	
West Virginia	□	□				
Wisconsin	□				□	□
Wyoming	□					□

□ indicates the provision(s) allowed by each State as of the end of the 1997 legislative session; * = by court rule.

COMPARISON OF DISCRETIONARY WAIVER PROVISIONS, 1997

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alabama	14							
Alaska	NS							
Arizona		NS						
Arkansas		14/16	14	14	14			14
California	16			14	14	14	14	
Colorado		12/14		12	12			
Delaware	NS/14							
District of Columbia		15		15				
Florida	14							
Georgia	15		13					
Hawaii		14/16		NS				
Idaho	14	NS		NS	NS	NS	NS	
Illinois	13							
Indiana	14	16		10/16			16	
Iowa	14/15							
Kansas	10							
Kentucky		14/16	14					
Louisiana				14	14			
Maine		NS		NS				
Maryland	15		NS					
Michigan	14							
Minnesota		14						
Mississippi	13							
Missouri		12						
Montana								
Nevada								
New Hampshire		15		13	13			
New Jersey	14			14	14	14		14
North Carolina		13						
North Dakota	16				14			
Ohio		14						
Oklahoma		NS						
Oregon		15		NS	NS/15	15		
Pennsylvania		14						
Rhode Island		16	NS					
South Carolina	16	14		NS	NS/14		14	14
South Dakota		NS						
Tennessee	16			NS	NS			
Texas		14/15	14				14	
Utah		14						
Vermont				10	10	10		
Virginia		14						
Washington	NS							
West Virginia		NS/14		NS	NS	NS	NS	
Wisconsin	15	14		14	14	14	14	
Wyoming	13							

Note: "NS" indicates "none specified." (Table adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

Comparison of Mandatory Waiver Provisions: Minimum Age and Offense Criteria, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Connecticut		14	14	14				
Delaware		15		NS	NS/16	16	16	
Georgia				14	14	15		
Illinois		15						
Indiana		NS						
Kentucky		14						
Louisiana				15	15			
North Carolina			13					
North Dakota				14	14		14	
Ohio	14			14/16	16	16		
Rhode Island				17	17			
South Carolina		14						
Virginia				14	14			
West Virginia		14		14	14	14		

Note: "NS" indicates "none specified."

A mandatory waiver statute requires the juvenile court judge, after finding probable cause, to waive jurisdiction to criminal court.

Presumptive Waiver: Minimum Age and Offense Criteria, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alaska					NS			
Arizona		16						
California		16		14/16	16	16	16	
District of Columbia		15*		15*				
Illinois		15						
Kansas		14			14		14	14
Minnesota		16						
Nevada					14			14
New Hampshire		15		15	15		15	
New Jersey				14	14	14	14	
North Dakota		14		14	14			
Pennsylvania		14		15	15			
Rhode Island								
Utah		16		16	16	16		16

Note: "NS" indicates "none specified."

* Case law interpreting the D.C. presumptive waiver provision has held that the burden of proof remains upon the government.

Direct File: Minimum Age and Offense Criteria, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Arizona		14						
Arkansas		14/16	14	14	14			14
Colorado		14/16		14	14	14		14
District of Columbia		16		16				
Florida	16	16	NS	14	14	14		14
Georgia			NS					
Louisiana				15	15	15	15	
Massachusetts		14			14			14
Michigan		14		14	14	14	14	
Montana				12/16	12/16	16	16	16
Nebraska	16	NS						
Oklahoma				15	15/16	15/16	16	15
Vermont	16							
Virginia				14	14			
Wyoming	17	14						

Note: "NS" indicates "none specified."

Statutory Exclusion: Minimum Age and Offense Criteria, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Any Criminal Offense	Certain Felonies	Capital Crimes	Murder	Certain Offenses			
					Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alabama		16	16				16	
Alaska					16	16		
Arizona		15		15	15			
Delaware		15						
Florida	NS				NS/16			
Georgia				13	13			
Idaho				14	14	14	14	
Illinois		15		13/15	15		15	15
Indiana		16		16	16		16	16
Iowa		16					16	16
Louisiana				15	15			
Maryland			14	16	16			16
Massachusetts				14				
Minnesota				16				
Mississippi		13/17	13					
Montana				17	17	17	17	17
Nevada	NS			NS	16			16
New Mexico				15				
New York				13/14	14	14		
Oklahoma				13				
Oregon				15	15			
Pennsylvania				NS/15	15			
South Carolina		16						
South Dakota		16						
Utah		16		16				
Vermont				14	14	14		
Washington				16	16	16		
Wisconsin				10	NS			

Note: "NS" indicates "none specified."

Twenty-eight States have statutes that remove certain offenses or age/offense/prior record categories from the juvenile court's jurisdiction. Generally, the laws of such States simply exclude anyone fitting into one of these categories from being defined as a "child" for juvenile court jurisdictional purposes. A juvenile accused of an excluded offense is treated as an adult from the beginning-that is, proceeded against (by information, indictment, or otherwise) in the criminal court that would have had jurisdiction over the same offense if it had been committed by an adult.

Some States exclude only the most serious offenses; in New Mexico, for example, only first-degree murder committed by a child of at least 15 is excluded. Others single out cases involving older juveniles. Mississippi excludes all felonies committed by 17-year-olds. It should be noted that one blanket application of this method -simply lowering the upper age limit of original) juvenile court jurisdiction-excludes the largest number of juveniles for adult prosecution. Finally, as is the case with the presumptive and mandatory waiver provisions previously discussed, some States focus not so much on offense or age as on the individual juvenile's offense history. Arizona excludes any felony committed by a juvenile as young as 15, provided the juvenile has two or more previous delinquency adjudications for offenses that would have been felonies if committed by an adult.

Minimum Age and Offenses for Which a Juvenile Can Be Transferred to Criminal Court in Every State, 1997

(adapted from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer. December, 1998.)

State	Minimum Transfer Age	Any Criminal Offense	Certain Felonies	Certain Offenses					
				Capital Crimes	Murder	Person Offenses	Property Offenses	Drug Offenses	Weapon Offenses
Alabama	14	14	16	16				16	
Alaska	NS	NS				NS	16		
Arizona	NS		NS		15	15			
Arkansas	14		14	14	14	14			14
California	14	16	16		14	14	14	14	
Colorado	12		12		12	12	14		14
Connecticut	14		14	14	14				
Delaware	NS	NS/14	15		NS	NS	16	16	
District of Columbia	15		15						
Florida	NS	NS		NS	14	NS	14		14
Georgia	NS	15		NS	13	13	15		
Hawaii	NS		14		NS				
Idaho	NS	14	NS		NS	NS	NS	NS	
Illinois	13	13	15		13*	15		15	15
Indiana	NS	14	NS		10*	16		16	16
Iowa	14	14	16					16	16
Kansas	10	10	14			14		14	14
Kentucky	14		14	14					
Louisiana	14				14	14	15	15	
Maine	NS		NS		NS				
Maryland	NS	15		NS	16	16			16
Massachusetts	14		14		14	14			14
Michigan	14	14	14		14	14	14	14	
Minnesota	14		14		16				
Mississippi	13	13	13	13					
Missouri	12		12						

Montana	12				12	12	16	16	16
Nebraska	NS	16	NS						
Nevada	NS	NS	14		NS	14			14
New Hampshire	13		15		13	13		15	
New Jersey	14	14			14	14	14	14	14
New Mexico	15				15				
New York	13				13	14	14		
North Carolina	13		13	13					
North Dakota	14	16	14		14	14		14	
Ohio	14	14	14		14	16	16		
Oklahoma	NS		NS		13	15	15	16	15
Oregon	NS		15		NS	NS	15		
Pennsylvania	NS		14		NS	15			
Rhode Island	NS		16	NS	17	17			
South Carolina	NS	16	14		NS	NS		14	14
South Dakota	NS		NS						
Tennessee	NS	16			NS	NS			
Texas	14			14				14	
Utah	14		14		16	16	16		16
Vermont	10	16			10	10	10		
Virginia	14		14		14	14			
Washington	NS	NS			16	16	16		
West Virginia	NS		NS		NS	NS	NS	NS	
Wisconsin	NS	15	14		10	NS	14	14	
Wyoming	13	13	14						

Note: "NS" indicates "none specified."